TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~212~~ 49.

THE STATE OF NEW JERSEY, APPELLANT,

vs.

WILLIAM F. ANDERSON, TRUSTEE OF COSMOPOLITAN POWER COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED JUNE 15, 1905.

(19,804.)

(19,804.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 302.

THE STATE OF NEW JERSEY, APPELLANT,

vs.

WILLIAM F. ANDERSON, TRUSTEE OF COSMOPOLITAN POWER COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 17, 1905.

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Transcript of Record.

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1904.

In the Matter of COSMOPOLITAN POWER COMPANY, Bankrupt.

STATE OF NEW JERSEY, Appellant,
vs.
WILLIAM F. ANDERSON, Trustee of the Estate of Cosmopolitan Power Co., Bankrupt, Appellee. } No. 1122.

Mr. Robert H. McCarter, Mr. Levy Mayer, counsel for appellant.
Mr. Frank W. Wheeler, Mr. F. D. Silber, Mr. Martin J. Isaacs, counsel for appellee.

Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

Transcript of record filed Oct. 7, 1904.
Printed record filed Oct. 14 1904.

EDWARD M. HOLLOWAY, Clerk.

1 Pleas had at a regular term of the district court of the United States for the northern district of Illinois, begun and held at the United States court rooms in the city of Chicago, in said division of said district, on the first Monday of July (it being the fourth day thereof), in the year of our Lord one thousand nine hundred and four and of the Independence of the United States the one hundred and twenty-ninth year.

The Honorable Christian C. Kohlsaat, judge, being absent; John C. Ames, United States marshal being absent,
In pursuance with the order of the court of date July 2, 1904, T. C. MacMillan, clerk, by his deputy Chas. A. Buell, being now here present, adjourns said court until Wednesday, July 6, A. D. 1904 at ten o'clock a. m.

2 Be it remembered that heretofore, to wit, on the 4th day of January, A. D. 1904, there was filed in the office of Sidney C. Eastman, referee, *In re* Cosmopolitan Power Co., bankrupt, objections trustee to claim of State of New Jersey, and afterwards, to wit, on the 30th day of September, A. D. 1904, said objections were filed in the clerk's office of said court, same being in the words and figures following, to wit

Objections of Trustee to Claim of State of New Jersey. Filed Jan. 4, 1904.

In the District Court of the United States for the Northern District of Illinois.

In re COSMOPOLITAN POWER Co., Bankrupt. In Bankruptcy. No. 9059.

Objections of William F. Anderson, Trustee, to the Claim of the State of New Jersey for $9,254.90.

Comes now William F. Anderson, trustee of the estate of the Cosmopolitan Power Co., bankrupt, and makes objection to the above entitled claim, upon the following grounds:

1. That nothing is due the State of New Jersey from said bankrupt.
2. That franchise taxes of the kind claimed by said State of New Jersey are not a proper or provable claim in bankruptcy.
3. That a part of the items claimed is interest on deferred tax payments, which should not be allowed.
4. That no taxes for 1903, during which time said corporation had ceased to do business and to use its alleged franchise and privilege can be allowed as a provable claim.
5. That no interest on such 1903 taxes can be claimed or allowed.
6. That said taxes claimed is not a claim entitled to payment by priority or in full.
7. That said taxes were not levied or spread in accordance with the law, and are not, therefore, a proper or allowable claim.
8. That said claim is otherwise improper, informal and insufficient.

3 Wherefore, this trustee prays that said claim be disallowed and denied.

WILLIAM F. ANDERSON,
Trustee of said Estate.

WHEELER, SILBER & ISAACS,
Attorneys for Trustee.

Endorsed: G. No. 9059. U. S. district court of northern dist. of Ills. Cosmopolitan Power Co., bankrupt. Objections of trustee to claim of State of New Jersey $9254.90. Filed Jan. 4, 1904 at 10 a. m. Sidney C. Eastman, referee. Filed Sep. 30, 1904. T. C. MacMillan, clerk.

And afterwards, to wit, on the 12th day of March, A. D. 1904, there was filed in the clerk's office of said court in the above entitled cause, a certificate for review, same being in the words and figures following, to wit:

Certificate for Review. Filed March 12, 1904.

In the District Court of the United States for the Northern District of Illinois.

In the Matter of COSMOPOLITAN POWER COMPANY, Bankrupt. No. 9059.

To the Honorable C. C. Kohlsaat, judge of said court:

The petition for review having been filed asking for a review of an order made by myself in the above entitled cause, I hereby certify that the facts proven, the order based thereon and my reasons therefor are hereto attached as Exhibit "A."

I also attach a stipulation by the parties, marked Exhibit "B."

I also attach the petition for review of the above order filed by the counsel for the State of New Jersey, marked Exhibit "C."

SIDNEY C. EASTMAN, Referee.

4 EXHIBIT A—Opinion of Referee.

EXHIBIT "A."

In the District Court of the United States for the Northern District of Illinois.

In the Matter of COSMOPOLITAN POWER CO., Bankrupt. No. —.

The State of New Jersey has filed a claim in the above entitled case for the sum of $9254.90, which has been duly verified by the comptroller of the treasury of the State under oath, and setting up it was entitled to be allowed as a prior claim against this estate the aforesaid amount from franchise tax levied by the State for the year 1902-1903, under the provisions of the act of the legislature entitled "An act to provide for the imposition of State taxes on certain corporations and for the collection thereof," April 18, 1884, and the acts supplemental thereto. The amount is made up of the items in the following statement attached to the proof of claim:

"Tax—1902	$5750.
Interest to October 15, 1903	891.25
Costs on injunction proceedings	26.15
Because of non-payment of taxes.	
Tax—1903	2500.00
Interest to October 15, 1903	87.50
	$9254.90"

The trustee filed the following objections:

1. That nothing is due the State of New Jersey from said bankrupt.

2. That franchise taxes of the kind claimed by said State of New Jersey are not a proper or provable claim in bankruptcy.

3. That a part of the items claimed is interest on deferred tax payments, which should not be allowed.

4. That no taxes for 1903, during which time said corporation had ceased to do business and to use its alleged franchise and privilege, can be allowed as a provable claim.

5. That no interest on such 1903 taxes can be claimed or allowed.

6. That said taxes claimed is not a claim entitled to payment by priority or in full.

7. That said taxes were not levied or spread in accordance with the law, and are not, therefore, a proper or allowable claim.

8. That said claim is otherwise improper, informal, and insufficient.

The question arises whether said tax is such a tax as is entitled to priority under the provisions of the bankruptcy act. Section 64*a*, entitled, "Debts which have priority," says: "The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district or municipality, in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court."

There appear to be only three decisions under the present act which have been published in the bankruptcy reports touching this question.

In the case of *Re* Ott, 2 A. B. R. 637, 95 Fed. 274, decided by Judge Woolson for the southern district of Iowa, the court held in substance, that the Iowa statute providing for a "mulct tax" or a license fee for carrying on a saloon business was not a claim entitled to such priority, because the supreme court of Iowa had decided that it was not a tax (Smith *vs.* Skow, 97 Iowa 640), and that the State decision construing such question should be followed by the United States court in bankruptcy in the district where such decision had been made. The court in this decision uses the following language: "It matters not that the legislature in the statute speaks of this lien as a tax. That does not make it a tax. It is in reality a charge or license exacted for the privilege of carrying on the business of vending liquors, which charge is made by statute a lien upon all property both personal and real used or connected with the business."

Referee Allen in the southern district of New York held in a case presented similar to the one under discussion (which was affirmed, as I am advised by counsel for the defendants), arising on a claim

filed by the State of New Jersey before him for such a tax,
6 that the same was a tax, basing his opinion on the decision of the supreme court of New Jersey. (Hancock, comptroller, *vs.* Singer Mfg. Co., reported in 62 N. J. Law 289.)

Judge McPherson in the district court for the eastern division of Pennsylvania, *In re* Danville Rolling Mill Co. 10 A. B. R. 327, held in a claim presented by the same State for the same purpose, that the supreme court of New Jersey, in the case of U. S. Car Co., 60 N. J. Equity, 514, had used language holding that the claim was not a tax, and therefore did not come within the provisions of section 64*a*.

It is desirable before proceeding to a discussion of the principles involved to ascertain what the New Jersey court of appeals has held on the subject.

The two cases influencing the two district courts in New York and Pennsylvania were decided within six months of each other. The Hancock case, decided on November 14, 1898, was an application by the comptroller of the State to assess the license tax so called on the corporate stock of the Singer Mfg. Co. It was resisted on the ground that the special charter of the company contained an exemption from any tax or impost whatsoever on its property outside of New Jersey, and also on the capital stock in the hands of the stockholders.

The comptroller made the point that the franchise tax was neither a tax nor an impost and consequently did not come under the privilege of the exemption, and also that the tax on the corporate stock would not be a tax on the individual stockholder.

The court held that it would be a breach of faith with the corporation to strain a technicality as claimed and that the words "any impost whatever" would cover the exemption and that the levying the franchise tax in the corporation would in effect be taxing the individual stock.

The second case decided some six months later by the same court arose from an attempt by the comptroller to enforce the franchise tax as a prior claim on an insolvent corporation in New Jersey. The court held that because of a section (sec. 6, Law of 1896 of N. J.) which made specific provision binding insolvent corporations for this franchise tax it would hold the incorporation liable, although in discussing the case the court said: "Although the statute con-
templated an imposition of this kind as a license fee or fran-
7 chise tax, it plainly is not a tax upon corporation franchises. In fact, it is not, strictly speaking a tax at all nor has it the elements of one. It is in reality an arbitrary imposition laid upon the corporation without regard to the value of the property or of its franchises and without regard to whether it exercises the latter or not, solely as a condition of its continued existence. The State in creating a corporation has the right to impose upon its creature such conditions as the legislature within constitutional limit may deem proper, and the acceptance by the corporation of the franchises, powers and privileges conferred upon it binds it to the performance

of those conditions so long as it continues to remain in possession of those franchises, powers and privileges, and the conditions themselves remain unrevoked by the legislature. And this is so without regard to the solvency or insolvency of the corporation, the value or want of value of its franchises, or whether or not it is exercising them, either by its officers and directors or through a receiver. The sole test, in determining its liability to comply with those conditions, so long as they remain unrevoked, is the existence or non-existence of the corporation."

This language in holding that it is not strictly speaking a tax, although collected in New Jersey, would seem to indicate that the court took the same position as the Iowa court, in holding that a license to do business was not a tax, irrespective of the question whether a license fee or not is enforceable against corporations who may be doing business in that State.

If, therefore, the language of the highest court of New Jersey be taken as conclusive on the subject, that in that State this claim is not a tax, and if the decisions of Judge McPherson and Judge Shiras be taken as *as* sound in holding that the law of the State where the tax was imposed as to its definition be conclusive as against the claim, then it should be here held that the claim should not be allowed as a prior claim but as an ordinary claim sharing equally with other creditors in the distribution of the estate.

However that may be, it would seem on general grounds that the claim was not well founded. It is a command on the part of the State to those desiring incorporation, that the corporation shall pay certain charges to the State as a condition for being allowed
8 to do business. In Illinois such a charge is made a condition precedent and is a lump sum apportioned to the amount of the capital stock. In New Jersey, not only a preliminary payment is required, but also future payments in the nature of conditions subsequent attach to the issuing of the franchise. In character it makes no difference whether the amount is payable at one time in the beginning or paid subsequently in instalments. It is a contract made between the State and the individuals for the breach of which the State has the privilege of cancelling the charter as well as collecting any amount that may be due. In New Jersey if the corporation was actually engaged in business in that State, by the same law, it becomes a prior claim in the event of the insolvency of the corporation. That provision, however, would not apply in Illinois as a ground for granting a prior claim against the estate. The bankruptcy statute says that it is the taxes that are due to the United States, State, county, district or municipality that are prior claims, and if it be not a tax but a contractual obligation merely then it would not be a prior claim in this State. In other words, the New Jersey statute providing that the insolvency of a corp[illegible]n does not prevent the State from collecting its assessment in fu[illegible]s not now apply.

The corporation in question is one that has been popularly termed

a "tramp" organization incorporated in one State with the expectation of doing business in another State, organizing in the first State because of certain privileges which its promotors conclude it cannot obtain in the State where it actually intends to do business. By the principles of comity prevailing between States such corporations are permitted to do business in foreign States subject to certain conditions, as in Illinois that of paying a fee to the State proportioned to the amount of capital stock actually embarked in business. In this case the corporation was capitalized for ten million dollars. Its entire capital stock was turned over in exchange for certain patent rights which were then and are now of uncertain and undetermined value. It consequently had no cash capital, and naturally, after a certain brief period of existence, became bankrupt and incurred a number of obligations which it was unable to meet. It would seem that the principles of the bankruptcy statute favoring equality among creditors would be violated in this instance by allowing the State of New Jersey to take so large a part of its assets (the 9 total amount of assets now ascertained amounting to $25,000.00), and unless it is clearly intended by the bankruptcy statute that such imposition should be considered as a tax and be awarded priority it would not be justifiable so to allow it.

It has been urged on behalf of the trustee that the word "State" in the bankruptcy act was intended to apply to the State where the bankruptcy proceeding is pending and where its assets are situate. There is considerable ground for this contention. One of the fundamental principles of taxation is that the property to be taxed should be within the jurisdiction of the State imposing the tax. It is a bare exercise of this franchise exercised solely in the State of Illinois which constitutes the ground of the New Jersey claim, all property of the bankrupt being situate in the State of Illinois; to hold that the State of New Jersey could collect this amount as a priority would be extending to the State of New Jersey privileges which I find no precedent for allowing. It seems to me that the kind of tax contemplated by the bankruptcy statute is one that is a lien on the property out of which the collection is to be made, and it can hardly be claimed that one State has a lien on property out of its jurisdiction.

As regards the tax of 1902, the petition in bankruptcy was filed April 23, 1903 and adjudication was decreed.

The New Jersey statute, section 152, provides that on or before the first Monday of June of each year the appraisers shall fix the amount of the tax "such tax shall therefore become due and payable." Sec. 153 provides "such tax when determined shall be a debt due from such company to the State" etc.

The petition in bankruptcy was filed before June 1903, and the bankruptcy form No. 31, provides that the claim must be due at the time of filing the bankruptcy petition.

Here, by the language of the statute of New Jersey it was not a debt before the appraisers acted. I therefore disallow the claim for the year 1903.

I therefore sustain objection No. 6 ante.

I find that the State is entitled to be allowed as a general creditor the sum of $4250 for the year 1902, plus interest to the date of bankruptcy amounting to $669.93, and also the sum of $26.15 costs of the injunction proceeding brought by the State against the company.

10 I therefore allow the claim for the State of New Jersey in the total sum of $4943.08 as a general claim.

Endorsed: No. 9050 In the district court of the United States for the northern district of Illinois. In the matter of *of* Cosmopolitan Power Co. Opinion of Sidney C. Eastman, referee in bankruptcy.

In the District Court of the United States for the Northern District of Illinois.

In the Matter of COSMOPOLITAN POWER Co., Bankrupt. No. —.

This case coming on to be heard on the proof of claim of the State of New Jersey and the objections of the trustee thereto, after hearing evidence and the arguments of counsel, it is hereby ordered that the claim of the State of New Jersey be allowed for the sum of $4943.08 as a general claim and that the claim for priority set up in said proof of claim be denied.

It is further ordered that the claimant and the other parties in interest have fifteen days within which to file a petition for review.

EXHIBIT B—Stipulation of Facts.

EXHIBIT " B."

In the District Court of the United States for the Northern District of Illinois.

In re COSMOPOLITAN POWER COMPANY, Bankrupt. No. 9059.

Stipulation.

It is hereby stipulated by and between the State of New Jersey, claimant, by Moran, Mayer & Meyer, its counsel, and William

11 F. Anderson, as trustee of the Cosmopolitan Power Company, bankrupt, by Wheeler, Silber & Isaacs, his counsel, that the following facts may be admitted as proved upon the hearing of the objections of said trustee, to the claim of the State of New Jersey, subject to all objections, as to competency, relevancy and materiality.

1. That on January 1, 1902, the said Cosmopolitan Power Company was a corporation, organized and existing under the laws of

the State of New Jersey, with a capital stock of forty million dollars, of which, on said day, ten million dollars was issued and outstanding.

2. That on the 13th day of May, 1902, pursuant to the laws of the State of New Jersey, the capital stock of said corporation was reduced from forty million dollars to two million five hundred thousand dollars.

3. That on and after the said 13th day of May, 1902, the total capital stock of said corporation issued and outstanding was two million five hundred thousand dollars.

4. That the said corporation never owned or had any property within the said State of New Jersey, since January 1st, 1902.

5. That the said corporation has not paid to the said State of New Jersey, any franchise taxes or license fees for the years 1902 and 1903.

6. That an involuntary petition in bankruptcy was filed against said Cosmopolitan Power Company, in the district court of the United States, for the northern district of Illinois, on the 23'd day of April, A. D. 1903, and that said corporation was thereafter duly adjudicated a bankrupt by said court.

MORAN, MAYER & MEYER,
Counsel for Claimant.
WHEELER, SILBER & ISAACS,
Counsel for Trustee.

Dated Chicago, February 13, 1904.

Endorsed: 9059. District court of the United States. Cosmopolitan Power Co., bankrupt. Stipulation. Filed M'ch 9, 1904, 10:30 a. m. Sidney C. Eastman, referee.

12 EXHIBIT C—Petition for Review.

EXHIBIT "C."

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

In the United States District Court in and for the Northern District of Illinois. In Bankruptcy.

In re COSMOPOLITAN POWER CO., Bankrupt. 9059.

To the Honorable Sidney C. Eastman, referee:

Your petitioner, The State of New Jersey, represents that on the 22nd day of December, A. D. 1903, your petitioner filed a claim against the said Cosmopolitan Power Co., a bankrupt, for the sum of $9254.90; that said claim was for franchise taxes levied by the State of New Jersey against said Cosmopolitan Power Co., bankrupt, for

the years 1902 and 1903, including interest thereon and costs of injunction proceedings on account of non-payment of said franchise taxes.

Your petitioner further represents that a motion was made on behalf of the State of New Jersey for an order upon the trustee to pay the said taxes as aforesaid, legally due and owing by said Cosmopolitan Power Co. to said State of New Jersey, in advance of the payment of dividends to the creditors of said bankrupt estate, and that your honor refused to enter such order.

Your petitioner further represents that on the 4th day of January, A. D. 1904, the trustee of said estate, William F. Anderson, filed objections to said claim of the State of New Jersey.

Your petitioner further represents that on the 4th day of February, 1904, said objections came up for hearing before your honor; that there were introduced in evidence, on behalf of this petitioner and in support of its claim, the following documentary proof:

1. Exemplified copy of certificate of incorporation of the Cosmopolitan Power Co.

2. Exemplified copy of certificate of board of assessors as
13 to assessment against the Cosmopolitan Power Co. for the year 1902.

3. Exemplified copies of assessments as a franchise tax against said Cosmopolitan Power Co. for the years 1902 and 1903.

4. Exemplified copy of return of board of assessors for purposes of assessment against said Cosmopolitan Power Co. for the year 1903.

Upon said hearing it was also stipulated between the parties that said Cosmopolitan Power Co. has not now and has not since January 1, 1902 had any property of any kind in said State of New Jersey. After argument of counsel, your honor took said matter under advisement and on February 26, 1904, the following order was entered by your honor.

"This case coming on to be heard on the proof of claim of the State of New Jersey and the objections of the trustee thereto, after hearing evidence and the arguments of counsel, it is hereby ordered that the claim of the State of New Jersey be allowed for the sum of $4943.08, as a general claim and that the claim of priority set up in said proof of claim be denied.

It is further ordered that the claimant and the other parties in interest, have fifteen days within which to file a petition for review."

Now comes the said State of New Jersey, by Moran, Mayer & Meyer, its attorneys, and objects and excepts to said order, and prays that your honor may certify this petition to his honor, Judge Christian C. Kohlsaat, judge of said court, for the purpose of having his honor review the order entered herein on February 26, 1904, by your honor, for the following reasons:

1. For that your honor erred in holding that said franchise tax

was not such a claim as was entitled to priority under section 64 (A) of the bankruptcy act of 1898.

2. For that your honor erred in not ordering the trustee, William F. Anderson, to pay the taxes legally due and owing by said Cosmopolitan Power Co. to said State of New Jersey, in advance of the payment of dividends to creditors of said estate.

3. For that your honor erred in allowing the claim of the State of New Jersey merely as a general claim for the sum of $4943.08.

4. For that your honor erred in not allowing the claim
14 of the State of New Jersey as a preferred claim for the sum of $9254.90.

5. For that your honor erred in holding that the franchise tax assessed against said Cosmopolitan Power Co. for the year 1902, amounting to $5750.00, including interest thereon from the 1st day of July, 1902, to October 15, 1903, being $891.25, was not such a claim as was entitled to priority under section 64 (A) of the bankruptcy act of 1898.

6. For that your honor erred in holding that the franchise tax assessed against said Cosmopolitan Power Co. for the year 1903, amounting to $2500., including interest thereon, from the 1st day of July, 1903, to October 15, 1903, being $87.50, was not such a claim as was entitled to priority under section 64 (A) of the bankruptcy act of 1898.

7. For that your honor erred in holding (even if said claim should be denied priority) that it should be allowed as a general claim only for the sum of $4943.08.

Wherefore, this claimant prays that your honor may certify this petition for review to his honor, Judge Christian C. Kohlsaat.

STATE OF NEW JERSEY,
By MORAN, MAYER & MEYER,
Its Attorneys.

MORAN, MAYER & MEYER,
Attorneys for Claimant.

Endorsed: No. 9095. United States district court, northern district of Illinois. In bankruptcy. *In re* Cosmopolitan Power Co. bankrupt. Petition for review. Filed March 9, 1904 at 12:30 p. m. Sidney C. Eastman, referee.

Endorsed: No. 9059. In the district court of the United States for the northern district of Illinois. In the matter of Cosmopolitan Power Co., bankrupt. Cert. for review. Sidney C. Eastman, referee in bankruptcy. Filed Mar. 12, 1904, at 11 o'clock a. m. T. C. MacMillan, clerk.

And afterwards, to wit, on the 15th day of March, A. D. 1904, there was filed in the clerk's office of said court, in the above entitled cause, a supplemental certificate for review, same being in the words and figures following, to wit:

15 Supplemental Certificate for Review, Filed March 15, 1904.

In the District Court of the United States for the Northern District of Illinois.

In the Matter of COSMOPOLITAN POWER CO., Bankrupt. No. 9059.

Honorable C. C. Kohlsaat, judge of said court:

I hereby certify that the attached exhibits, consisting of the proof of claim of the State of New Jersey, and Exhibits A, B, C, D and E constitute all the evidence offered in support of the claim of the State of New Jersey herein. This certificate is supplementary to my certificate for review filed herein on March 12th, 1904.

Respectfully submitted,

SIDNEY C. EASTMAN,
Referee in Bankruptcy.

Proof of Claim of State of New Jersey.

In the District Court of the United States for the Northern District of Illinois, Northern Division. In Bankruptcy.

In the Matter of COSMOPOLITAN POWER COMPANY, Bankrupt.

UNITED STATES OF AMERICA,
State of New Jersey, District of New Jersey, } ss:

At Trenton, New Jersey, district of New Jersey, on the twenty-seventh day of October, A. D. nineteen hundred and three, came J. Willard Morgan, comptroller of the treasury of the State of New Jersey, and made oath that he is comptroller as aforesaid and that he is duly authorized to make this proof, and says further that the said Cosmopolitan Power Company is justly and truly

16 indebted to said State of New Jersey in the sum of nine thousand two hundred and fifty four dollars and ninety cents for franchise taxes levied by the State of New Jersey for the years nineteen hundred and two and nineteen hundred and three, under the provisions of an act of the legislature of said State entitled "An act to provide for the imposition of State taxes upon certain corporations and for the collection thereof," approved April eighteenth, eighteen hundred and eighty-four, and the acts supplementary thereto, together with interest and costs which have accrued on said taxes under the provisions of the act aforesaid, amounting in the whole to the sum aforesaid, a statement of said taxes, interest and costs being hereto annexed; that no note has been received for said debt nor any judgment rendered thereon and that no part of said debt has been paid.

J. WILLARD MORGAN.

Subscribed and sworn to before me at Trenton, this 27th day of October, 1903.

OWEN W. KITE,
N. P. of N. J.

[NOTARIAL SEAL.]

Statement.

Tax..... 1902.....	$5,750.00
Interest to October 15, 1903	891.25
Costs on injunction proceedings because of non-payment of taxes.....	26.15
Tax..... 1903.....	2,500.00
Interest to October 15, 1903.....	87.50
	$9,254.90

In the district court of the United States for the northern district of Illinois, northern division. In the matter of Cosmopolitan Power Co. bankrupt. Proof of claim of the State of New Jersey. Filed Dec. 21st, 1903, at 11 a. m. Sidney C. Eastman, referee. Moran, Mayer & Meyer, attorneys.

EXHIBIT A—Certificate of Board of Assessors as to 1902 Tax.

TRENTON, N. J., February 8, 1904.

I, Irvine E. Maguire, secretary of the State board of assessors of the State of New Jersey, do hereby certify that the Cosmopolitan Power Company, a corporation duly organized and existing under the laws of the State of New Jersey, having failed to make
17 the annual return to said board required by law on or before the first Tuesday of May, 1902, upon the blank form sent for the purposes of such return to the registered New Jersey agent of said corporation, the State board of assessors did, on the seventh day of November, nineteen hundred and two (1902), levy and report to the State comptroller an assessment against the said Cosmopolitan Power Company, in default of the return as required: said State board of assessors having ascertained and fixed the amount of the annual license fee or franchise tax at the sum of five thousand seven hundred and fifty dollars ($5,750.00), in such manner as was deemed by them most practicable, the same being based upon the best information obtainable by the State board of assessors, the amount fixed being the sum of five thousand seven hundred and fifty dollars ($5,750.00).

IRVINE E. MAGUIRE.

STATE OF NEW JERSEY,
Department of State.

I, S. D. Dickinson, secretary of the State of New Jersey, do hereby certify, that Irvine E. Maguire, Esquire, who hath signed the forego-

ing certificate, was, at the doing thereof, and now is secretary of the State board of assessors in and for the State of New Jersey, duly appointed, commissioned and sworn according to law, and that full faith and credit are to be given to his official attestations; and that the said signature is in the proper handwriting of the said Irvine E. Maguire.

In testimony whereof, I have hereunto set my hand and affixed my official seal at Trenton, this eighth day of February, A. D. 1904.

S. D. DICKINSON,
Secretary of State.

[SEAL.]

STATE OF NEW JERSEY:

I, Franklin Murphy, governor of the State of New Jersey, do hereby certify that S. D. Dickinson, Esquire, who hath signed the annexed certificate, and whose official seal is thereto annexed, was, at the doing thereof, and now is, secretary of state of the
18 State of New Jersey, duly appointed, commissioned and sworn, and that full faith and credit are to be given to his official attestations; that the said signature is in the proper handwriting of the said S. D. Dickinson, and the seal his seal of office, and that the said certificate is in due form of law and by the proper officer.

In testimony whereof, I have hereunto set my hand and caused the great seal of the State of New Jersey to be hereunto affixed at the city of Trenton in said State, this eighth day of February, in the year of our Lord one thousand nine hundred and four and of the Independence of the United States the one hundred and twenty-eighth.

[GREAT SEAL.] FRANKLIN MURPHY.

Endorsed: Certificate of sec'y of State b'd of assessors as to 1902 tax. Ex. A. *In re* Cosmopolitan Power Co., b'k'pt. Filed Feb. 12, 1904, at 10 a. m. Sidney C. Eastman, referee.

EXHIBIT B—Certified Copies of Assessments for 1902 and 1903.

STATE OF NEW JERSEY:

Office of Comptroller of the Treasury.

TRENTON, Feb. 8th, 1904.

Certificate.

I hereby certify that the following are true copies of the assessments levied against the Cosmopolitan Power Company, for the years 1902 and 1903. I also certify that I have no official seal.

J. WILLARD MORGAN,
Comptroller of the Treasury.

SCHEDULE No. 7

Filed Nov. 7th, 1902.

For Taxes of 1902.

Office of the State Board of Assessors.

TRENTON, NEW JERSEY, Nov. 7th, 1902.

Hon. J. Willard Morgan, comptroller of the State of New Jersey:

In pursuance of the provisions of an act of the legislature entitled, "An act to provide for the imposition of State taxes upon certain corporations and for the collection thereof," approved April 18th, 1884, and the various supplements and amendments thereto, the State board of assessors hereby certifies and reports to you a statement showing basis of tax for the year 1902, as returned by each corporation, or as ascertained by said board, and the amount of tax due thereon respectively at the rates fixed by law.

JNO. C. RANKIN, JR., President,
ROBERT S. GREEN,
S. J. MEEKER,
DAVID BAIRD,
State Board of Assessors.

IRVINE E. MAGUIRE, Secretary.

Name of Company.	Address.	Capital Stock.	Tax.
Cosmopolitan Power Co.	Chas. N. King, 243 Washington St., Jersey City N. J.	$40,000,000.00	$5,750.00

STATE OF NEW JERSEY:

Office of Comptroller of the Treasury.

Cer. # 2. Trenton.
Schedule No. 1. Filed June 1st, 1903.

For Taxes of 1903.

Office of the State Board of Assessors.

TRENTON, NEW JERSEY, June 1st, 1903.

Hon. J. Willard Morgan, comptroller of the State of New Jersey:

In pursuance of the provisions of an act of the legislature entitled, "An act to provide for the imposition of State taxes upon certain corporations and for the collection thereof," approved April 18th,

1884, and the various supplements and amendments thereto, the State board of assessors hereby certifies and reports to you a statemen showing basis of tax for the year 1903, as returned by each corporation, or as ascertained by said board, and the amount of tax due thereon respectively at the rates fixed by law.

DAVID BAIRD, President.
ROBERT S. GREEN,
S. J. MEEKER,
THEODORE STRONG,
State Board of Assessors.

IRVINE E. MAGUIRE, Secretary.

Name of Company.	Address.	Capital Stock.	Tax.
Cosmopolitan Power Co.	Chas. N. King, Jersey City, N. J.	$2,500,000.00	$2,500.00

20 STATE OF NEW JERSEY,
Department of State.

I, S. D. Dickinson, secretary of state of the State of New Jersey, do hereby certify, that J. Willard Morgan, Esquire, who hath signed the foregoing certificate, was, at the doing thereof, and now is comptroller in and for the State of New Jersey duly appointed, commissioned and sworn according to law, and that full faith and credit are to be given to his official attestations; and I further certify, that the said signature is in the proper handwriting of the said J. Willard Morgan.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, this eighth day of February, A. D. 1904.

[SEAL.]

S. D. DICKINSON,
Secretary of State.

STATE OF NEW JERSEY:

I, Franklin Murphy, governor of the State of New Jersey, do hereby certify that S. D. Dickinson, Esquire, who hath signed the annexed certificate, and whose official seal is thereto annexed, was, at the doing thereof, and now is, secretary of state of the State of New Jersey, duly appointed, commissioned and sworn, and that full faith and credit are to be given to his official attestations; that the said signature is in the proper handwriting of the said S. D. Dickinson, and the seal his seal of office, and that the said certificate is in due form of law and by the proper officer.

In testimony whereof, I have hereunto set my hand and caused the great seal of the State of New Jersey to be hereunto affixed at

the city of Trenton, in said State, this eighth
By the Governor. day of February, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States the one hundred and twenty-eighth.
[SEAL.] FRANKLIN MURPHY.

S. D. DICKINSON,
Secretary of State.

Endorsed: Copies of the assessments for 1902 and 1903. Ex. B. *In re* Cosmopolitan Power Co., bkpt. Filed Feb. 12, 1904, at 10 a. m. Sidney C. Eastman, referee.
(10c. internal revenue stamp cancelled.)

21 EXHIBIT C—Certificate of Incorporation of Cosmopolitan Power Co.

Certificate of Incorporation of Cosmopolitan Power Company.

This is to certify that we, the undersigned, do hereby associate ourselves into a corporation under and by virtue of the provisions of an act of the legislature of the State of New Jersey, entitled "An act concerning corporations" (revision of 1896), and the several acts supplemental thereto and amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

First. The name of the corporation is Cosmopolitan Power Company.

Second. The location of its principal office in the State of New Jersey, is at No. 243 Washington street, in the city of Jersey City, in the county of Hudson. The name of the agent therein and in charge thereof and upon whom process against this corporation may be served, is Charles N. King.

Third. The objects for which and for any of which the corporation is formed are:

To manufacture, own, operate, handle, deal in, buy and sell engines, power machines and vehicles of every kind and nature and all parts thereof, and all materials, apparatus and articles used in the construction thereof or in connection therewith; to own land, or otherwise hold, buy, sell and deal in lands suitable for manufacturing purposes; also to own lands or otherwise hold, to buy and sell lands, buildings suitable for storing, manufacturing, operating, handling, dealing in or utilizing in any manner whatsoever engines or any machine for the development of power; to deal in, produce, to build, purchase or lease or otherwise hold houses, buildings or manufacturing property of any description necessary for the conduct of the business herein contemplated including the buying and selling or otherwise disposing of the same; to manufacture, purchase or otherwise acquire, to hold, mortgage, pledge, sell, assign and transfer or otherwise dispose of, to invest, trade, deal in, and deal with products,

materials, goods, wares and merchandise and property of every class and description; to purchase, lease or otherwise acquire all or any part of the good will, business and assets and to undertake
22 all or any part of the liabilities of any person, firm, association or corporation now or hereafter engaged in the handling of engines, power machines or vehicles, or the manufacture of any such product and to pay for the same in cash, bonds or otherwise; to apply for, purchase or otherwise acquire any and all inventions, processes and patters patent covering the same used in connection with the business herein contemplated; to assume in whole or in part the contracts and contractual obligations of every nature, kind or description of any firm, person, association or corporation engaged in — connected with the manufacture or handling of engines, power machines or vehicles; to guarantee the contracts and contractual obligations of every nature and kind whatsoever of any such person, firm, association or corporation; to purchase and deal in, hold and in any manner acquire all or any portion of the capital stock of any corporation, to vote the same or control and utilize the same to the same extent and with the same rights and privileges as a natural person might or could do; to have one or more offices and to carry on all or any part of its operations and business without the State of New Jersey; to buy and own bonds, mortgages, stocks, or to trade in the same; to hold, purchase, mortgage, lease and convey real and personal property in any State or Territory of the United States and in any foreign country or place and in general to do any and all acts or things necessary to further the objects above enumerated with all the powers conferred by the laws of the State of New Jersey upon corporations under the acts herein referred to.

The corporation shall also have power to conduct its business in all its branches, have one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in any State, Territory, or colony of the United States and in any foreign country or place.

Fourth. The total authorized capital stock of this corporation is forty million dollars ($40,000,000) divided into four hundred thousand ($400,000) shares, of the par value of one hundred dollars ($100) each.

Fifth. The names of the incorporators, the post office address of each, and the number of shares subscribed for by each, the aggregate of which subscriptions ($3,000.00) is the amount of capital stock with which this corporation will commence business, are as follows:

23

Name.	Post office address.	Number of shares.
George E. Hargrave,	243 Washington street, Jersey City, New Jersey,	28
Henry E. Mattison,	243 Washington street, Jersey City, New Jersey,	1
William H. Wilson, Jr.,	243 Washington street, Jersey City, New Jersey,	1

Sixth. The duration of the corporation shall be unlimited.

Seventh. The corporation may use and apply its surplus earnings, or accumulated profits authorized by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock from time to time, to such extent and in such manner and upon such terms as its board of directors shall determine; and neither the property nor the capital stock so purchased and acquired nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation shall be regarded as profits for the purpose of declaration or payment of dividends, unless so determined by a majority of the board of directors, or a majority of the stockholders.

The corporation, in its by-laws, may prescribe the number necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number.

The number of directors may be altered at any time by vote of the board of directors, and in case of any increase thereof the board of directors shall have power to elect such additional directors to hold office until the next meeting of stockholders, or until their successors shall be elected.

The board of directors shall have power, without the assent or vote of the stockholders, to make, alter, amend and re-cind the by-laws of the corporation, to fix the amount to be reserved as working capital, to authorize and to cause to be executed mortgages and liens upon the real and personal property of the corporation, and from time to time to sell, assign, transfer or otherwise dispose of any or all of the property of the corporation; but no such sale of all the property shall be made except pursuant to the vote of at least two thirds of the board of directors.

The board of directors, by resolution passed by a majority of the whole board, may designate three or more directors to con-
24 stitute an executive committee, which committee to the extent provided in said resolution or in the by-laws of the corporation, shall have, and may exercise the power of the board of directors in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

The board of directors from time to time shall determine whether and to what extent, and at what times and places and under what conditions and regulations, the accounts and books of the corporation, or any of them shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the board of directors, or by resolution of the stockholders.

The board of directors shall have power to hold its meetings, to have one or more offices, and to keep the books of the corporation (except the stock and transfer books) outside of this State, at such places as may be from time to time designated by them.

In witness whereof, we do hereby make, record and file this certificate, and have set our hands and seals in the city of New York, this 30th day of April, 1900.

GEORGE E. HARGRAVE. L. S.
HENRY E. MATTISON. L. S.
WILLIAM H. WILSON, JR. L. S.

Signed, sealed and delivered in the presence of:
WM. H. FAIN.

STATE OF NEW YORK, }
County of New York, } ss:

On this 30th day of April, 1900, before the undersigned William H. Fain, a commissioner of deeds for the State of New Jersey residing in the State of New York, personally came George E. Hargrave, Henry E. Mattison and William H. Wilson, Jr., to me personally known and known to me to be the individuals named in and who executed the foregoing certificate of incorporation and I having first made known to them the contents thereof, they did each
25 acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

WM. H. FAIN,
A Commissioner of Deeds for the State of
[SEAL.] New Jersey, Residing in New York.

(10c. internal revenue stamp cancelled.)

Endorsed: "Received in the Hudson Co., N. J. clerk's office April 30th A. D. 1900 and recorded in clerk's record No. — on page — Maurice J. Stack, clerk."

Endorsed: "Filed Apr. 30 1900 George Wurts secretary of state."

STATE OF NEW JERSEY, }
Department of State. }

I, S. D. Dickinson, secretary of state of the State of New Jersey, do hereby certify that the foregoing is a true copy of the certificate of incorporation of Cosmopolitan Power Company, and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the thirtieth day of April A. D. 1900, and now remaining on file therein.

In testimony whereof, I have hereunto set my hand and affixed my official seal at Trenton, this eighth day of February, A. D. 1904.

S. D. DICKINSON,
[SEAL.] Secretary of State.

Certified copy of certificate of incorporation of Cosmopolitan Power Company.

STATE OF NEW JERSEY:

I, Franklin Murphy, governor of the State of New Jersey, do hereby certify that S. D. Dickinson, Esquire, who hath signed the annexed certificate, and whose official seal is thereto annexed, was, at the doing thereof, and now is, secretary of state of the State of New Jersey, duly appointed, commissioned and sworn, and that full faith and credit are to be given to his official attestations;
26 that the said signature is in the proper handwriting of the said S. D W. Dickinson, and the seal his seal of office, and that the said certificate is in due form of law and by the proper officer.

In testimony whereof, I have hereunto set my hand and caused the great seal of the State of New Jersey to be hereunto affixed, at the city of Trenton, in said State, this eighth day of February, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States the one hundred and twenty-eighth.

By the Governor,
S. D. Dickinson,
Secretary of State.

[SEAL.] FRANKLIN MURPHY.

Endorsed: Ex. C. *In re* Cosmopolitan Power Co., bkpt. Filed Febr. 12, 1904 at 10 a. m. Sidney C. Eastman, referee.

EXHIBIT D—Motion of State of New Jersey.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

In the United States District Court in and for the Northern District of Illinois, Northern Division Thereof.

In re COSMOPOLITAN POWER CO., Bankrupt. No. —. In Bankruptcy.

Re Claim of State of New Jersey for Preference.

Now comes the State of New Jersey, by Moran, Mayer & Meyer, its attorneys, and respectfully moves the court for an order upon the trustee herein to pay the taxes legally due and owing by said bankrupt to the State of New Jersey, as per the claim of said State
27 of New Jersey filed herein, in advance of the payment of dividends to the creditors of said estate.

Respectfully submitted.

STATE OF NEW JERSEY,
By MORAN, MAYER & MEYER,
Its Attorneys.

Endorsed: Ex. D. U. S. district court, northern district of Illinois. Northern division thereof. Cosmopolitan Power Co. bankrupt. Motion of State of New York. Filed Feb. 12, 1904, at 10 a. m. Sidney C. Eastman, referee.

EXHIBIT E—Return of Cosmopolitan Power Co. for 1903.

Copy.

Report of the Cosmopolitan Power Co.

G. E. Highley, President. J. F. Hetherington, Treasurer, Secretary.

Date of incorporation: April 1900.
Principal office in New Jersey.
City or town: Jersey City, N. J.
Street and number: 243 Washington St.
Name of agent in charge: Chas. N. King.

This report is required by the State board of assessors of New Jersey under the provisions of chapter 9, Laws of 1901, "A further supplement to an act entitled 'An act to provide for the imposition of State taxes upon certain corporations and for the collection thereof,' approved April eighteenth, one thousand eight hundred and eighty-four," approved February 19th, 1901, and in accordance with said act this report must be filed with said board on or before the first Tuesday of May annually.

"All corporations incorporated under the laws of this State, other than those which are subject to the payment of a State franchise tax assessed upon the basis of gross receipts, shall make annual report to the State board of assessors on or before the first Tuesday of May in each year, and shall state therein the amount of the capital stock of such corporation issued and outstanding on the first day of January preceding the making of said return, together with such other information as may be required by said board to carry out
28 the provisions of this act, and shall pay an annual license fee or franchise tax of one tenth of one per-centum on all amounts of capital stock issued and outstanding up to and including the sum of three million dollars; on all sums of capital stock issued and outstanding in excess of three million dollars and not exceeding five million dollars, an annual license fee or franchise tax of one twentieth of one percentum, and the further sum of fifty dollars per annum per one million dollars or any part thereof, on all amounts of capital stock issued and outstanding in excess of five million dollars; provided that this act shall not apply to railway, canal or banking corporations, or to savings banks, cemeteries or religious corporations or purely charitable or purely educational associations not conducted for profit, or manufacturing or mining corporations at least fifty per centum of whose capital stock issued and outstand-

ing is invested in mining or manufacturing carried on within this State, and which mining or manufacturing corporations shall have stated in the annual return to the State board of assessors where the mine or manufacturing establishment of such corporation or corporations is or are located, the character of the ores mined or the goods manufactured, the total amount of its capital stock embarked in the business of mining or manufacturing and the amount of capital stock actually employed in New Jersey in carrying on such mining or manufacturing business; if any manufacturing or mining company carrying on business in this State shall have less than fifty per centum of its capital stock, issued and outstanding, invested in business carried on within this State, such company shall pay the annual license fee or franchise tax herein provided for companies not carrying on business in this State, but shall be entitled, in the computation of such tax, to a deduction from the amount of its capital stock issued and outstanding of the assessed value of its real and personal estate so used in manufacturing or mining."

After the tax has been levied by the State board of assessors any corporation which desires to appeal to said board for a review of the assessment and a readjustment of the tax so levied must file with said board within three months from the date of assessment a petition of appeal, duly verified according to law, stating specifically the grounds upon which the appeal is taken, and the reasons why
29 the tax is considered excessive and unjust. If the petition of appeal is not filed within three months, the right of appeal to the State board shall be considered and treated as having been waived and the amount of tax levied shall be payable and collected as other taxes levied by said board. P. L. 1897, chapter 98.

Office State Board of Assessors.

TRENTON, NEW JERSEY.

This report must show existing conditions January 1st, 1903. All of the following questions must be answered, and wherever the proper answer is "none" or "nothing," it should be so stated.

1. What is the amount of your capital stock authorized? $2,500,000.00.

2. Into how many shares is it divided? 25,000.

3. How many shares are fully paid, either in cash or by property purchased? All.

4. How many shares are partially paid? None.

5. What is the amount of your capital stock issued? $2,500,000.00.

6. What is the nature of the business of your corporation? Mfg. Selling engines, power m'ch'y etc.

7. Is your corporation engaged in manufacturing or mining? Manufacturing.

8. If so, state where.

A. In New Jersey, ——. City or town, ——. Street and number, ——.

B. If in other places, state where, city or town, Chicago, Ill. Street and number, 4013–4023 Wentworth Ave.

9. What is the total amount of your capital stock invested in manufacturing or mining? All.

10. What is the amount of your capital stock actually employed in manufacturing or mining in New Jersey? None.

11. What is the local assessed valuation for 1902, of your corporation's real and personal estate used in manufacturing or mining in New Jersey?

Real estate none.

Personal, none.

I, the undersigned, do hereby certify as treasurer of the
30 Cosmopolitan Power Company, that the foregoing return is correct and true.

(Signed) STEWART D. HANK, [L.S.]

Address, Jersey City, N. J., 243 Washington Street.

(Signed) E. P. STONINGTON, Witness.

The above certificate is made in conformity with section 3 of the act of April 18th, 1884, which provides that if any officer of any company required by this act to make a return, shall in such return make a false statement, he shall be deemed guilty of perjury.

TRENTON, N. J., Feb. 8, 1904.

I, Irvine E. Maguire, secretary of the State board of assessors of the State of New Jersey, do hereby certify that the within is a true copy of the annual return made by the Cosmopolitan Power Company to said State board of assessors for purposes of taxation for the year nineteen hundred and three, as the same remains of record in said office of State board of assessors of New Jersey. I further certify that upon the return so made the State board of assessors did, on the first day of June, 1903, levy and report to the State comptroller a tax of $2,500.00, being at the rate of one-tenth of one per centum upon the amount of capital stock issued; to wit, upon the sum of $2,500,000.00.

I also certify that I have no official seal.

IRVINE E. MAGUIRE.

(Copy) 1903. M. C. Cosmopolitan Power Co. Filed May 2, 1903. Basis of assessment. Capital stock $—. Tax, $—.

This return must be sent addressed to the State board of assessors, Trenton, N. J. Before the first Tuesday in May.

STATE OF NEW JERSEY,
Department of State.

I, S. D. Dickinson, secretary of the State of New Jersey, do hereby certify, that Irvine E. Maguire, Esquire, who hath signed the fore-

going certificate, was, at the doing thereof, and now is secretary of the State board of assessors in and for the State of New Jersey, duly appointed, commissioned and sworn according to law, and
31 that full faith and credit are to be given to his official attestations; and I further certify that the said signature is in the proper handwriting of the said Irvine E. Maguire.

In testimony whereof, I have hereunto set my hand and affixed my official seal at Trenton, this eighth day of February, A. D. 1904.

[SEAL.] S. D. DICKINSON,
Secretary of State.

STATE OF NEW JERSEY:

I, Franklin Murphy, governor of the State of New Jersey, do hereby certify that S. D. Dickinson, Esquire, who hath signed the annexed certificate, and whose official seal is hereto annexed, was, at the doing thereof, and now is secretary of the State of New Jersey, duly appointed, commissioned and sworn, and that full faith and credit are to be given to his official attestations; that the said signature is in the proper handwriting of the said S. D. Dickinson, and the seal his seal of office, and that the said certificate is in due form of law and by the proper officer.

In testimony whereof, I have hereunto set my hand and caused the great seal of the State of New Jersey to be hereunto affixed at the city of Trenton in said State, this eighth day of February, in the year of our Lord one thousand nine hundred and four and of the Independence of the United States the one hundred and twenty-eighth.

[GREAT SEAL.] FRANKLIN MURPHY.

By the governor,

S. D. DICKINSON,
Secretary of State.

Endorsed: Ex. E. Return for 1903. *In re* Cosmopolitan Power Co., b'k'pt. Filed Febr. 12, 1904, at 10 a. m. Sidney C. Eastman, referee.

Endorsed: No. 9059. In the district court of the United States for the northern district of Illinois. In the matter of Cosmopolitan Power Co., bankrupt. Sup. cert. for review. Sidney C. Eastman, referee in bankruptcy. *Re* cl'm of New Jersey. Filed Mar. 15, 1904 at 10 o'clock a. m. T. C. MacMillan, clerk.

32 And afterwards, to wit, on the 12th day of September, A. D. 1904, the following order was had and entered of record, in said cause, before the Hon. Christian C. Kohlsatt, judge, to wit:

Order of Sept. 12, 1904, Confirming and Approving Order of Referee.

In re COSMOPOLITAN POWER COMPANY, Bankrupt. 9059.

This matter coming on to be heard on the certificate of review filed by Referee Sidney C. Eastman, at the petition of the State of New Jersey, for a review of the order of said referee, upon the claim of said State of New Jersey, and the court having heard argument of counsel and being fully advised in the premises, it is—

Ordered that the finding and order of said referee in the matter of the claim of said State of New Jersey be and the same is hereby confirmed and approved; to which ruling of the court said State of New Jersey, by its solicitors, duly excepts and enters its motion for an appeal, whereupon the court fixes the amount of the appeal bond at the penal sum of $300.00.

And afterwards, to wit, on the 19th day of September, A. D. 1904, there was filed in the clerk's office of said court, in the above entitled cause, a petition for appeal, same being in the words and figures following, to wit:

33 Petition for Appeal. Filed Sept. 19, 1904.

UNITED STATES OF AMERICA, Northern District of Illinois, } ss:

In the United States District Court in and for the Northern District of Illinois, Northern Division Thereof. In Bankruptcy.

In re COSMOPOLITAN POWER COMPANY, Bankrupt. No. 9059.

To the honorable district court of the United States, northern district of Illinois, northern division:

The State of New Jersey, a creditor herein, feeling itself aggrieved by the order made and entered on the 12th day of September, 1904, in the above entitled cause, does hereby appeal from said order and decree to the United States circuit court of appeals for the seventh circuit, for the reasons specified in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed, and that the amount of the bond upon appeal shall be fixed by this court, and that a transcript of the proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the United States circuit court of appeals for the seventh circuit.

STATE OF NEW JERSEY,
By MORAN, MAYER & MEYER, Its Att'ys.

Chicago, September 19th, 1904.

Endorsed: No. 9059. United States district court, northern district of Illinois, northern division. *In re* Cosmopolitan Power Co., bankrupt. Petition for appeal. Filed Sep. 19, 1904 at 10 o'clock a. m. T. C. MacMillan, clerk. Moran, Mayer & Meyer, Chicago.

34 And afterwards to wit, on the 19th day of September, A. D. 1904, there was filed in the clerk's office of said court, in the above entitled cause, assignments of error, same being in words and figures following, to wit:

Assignment of Errors. Filed Sept. 19, 1904.

UNITED STATES OF AMERICA, Northern District of Illinois, } ss:

In the United States District Court in and for the Northern District of Illinois, Northern Division Thereof. In Bankruptcy.

In re COSMOPOLITAN POWER COMPANY, Bankrupt. No. 9059.

Assignment of Errors by the State of New Jersey.

And now comes the State of New Jersey and files herein the following assignment of errors upon which it will rely upon its appeal from the order made and entered by this honorable court on the 12th day of September, 1904, in the above entitled cause, being that certain order entered herein on the claim of said State of New Jersey, confirming and approving the finding and order of the referee thereon:

1. For that the court erred in holding that said franchise tax was not such a claim as was entitled to priority under section 64 (A) of the bankruptcy act of 1898.

2. For that the court erred in not ordering the trustee, William F. Anderson, to pay the taxes legally due and owing by said Cosmopolitan Power Company to said State of New Jersey, in advance of the payment of dividends to creditors of said estate.

3. For that the court erred in allowing the claim of the State of New Jersey merely as a general claim, for the sum of $4943.08, and not as a preferred claim.

4. For that the court erred in not allowing the claim of the State of New Jersey as a preferred claim for the sum of $9254.90.

35 5. For that the court erred in holding that the franchise tax assessed against said Cosmopolitan Power Company for the year 1902, amounting to $5750.00, including interest thereon from the 1st day of July, 1902, to October 15, 1903, being $891.25, was not such a claim as was entitled to priority under section 64 (A) of the bankruptcy act of 1898.

6. For that the court erred in holding that the franchise tax as-

sessed against said Cosmopolitan Power Company for the year 1903, amounting to $2500.00, including interest thereon, from the 1st day of July, 1903, to October 15, 1903, being $87.50, was not such a claim as was entitled to priority under section 64 (A) of the bankruptcy act of 1898.

7. For that the court erred in holding (even if said claim should be denied priority) that it should be allowed as a general claim only, for the sum of $4943.08.

Wherefore, the said State of New Jersey prays that said order of said district court may be reversed and the said cause remanded to said district court, with directions to enter an order allowing the claim of said State of New Jersey as a preferred claim under section 64 (A) of the bankruptcy act of 1898 and amendments thereto, and directing William F. Anderson, trustee of said estate, to pay said claim, and that said trustee pay all the costs of this proceeding.

STATE OF NEW JERSEY,
By MORAN, MAYER & MEYER, Its Att'ys.

Endorsed: No. 9059. United States district court, northern district of Illinois, northern division. *In re* Cosmopolitan Power Co., bankrupt. Assignments of errors. Filed Sep. 19, 1904, at 10 o'clock a. m. T. C. MacMillan, clerk. Moran, Mayer & Meyer, law offices, Unity building, Chicago.

And afterwards, to wit, on the 19th day of September, A. D. 1904, there was filed in the clerk's office of said court, in the above entitled cause, a bond, same being in the words and figures following, to wit:

Bond on Appeal. Filed Sept. 19, 1904.

Know all men by these presents, that we, The State of New Jersey, as principal, and Francis E. Matthews, as surety, are held and
36 firmly bound until William F. Anderson, trustee, in bankruptcy, of the Cosmopolitan Power Company, in the full and just sum of three hundred dollars ($300.), to be paid to said William F. Anderson, trustee in bankruptcy of said Cosmopolitan Power Company, his certain attorneys, executors, administrators, successors or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of September, in the year of our Lord one thousand nine hundred and four.

Whereas, lately at a term of the district court of the United States in and for the northern district of Illinois, northern division, in the matter of the claim of the State of New Jersey, pending in said court against the Cosmopolitan Power Company, an order was entered by said court on the 12th day of September, 1904, confirm-

ing and approving the finding and order of the referee thereon, and said State of New Jersey, having obtained an appeal and filed a copy thereof in the clerk's office of said court, to reverse said order, and a citation directed to said William F. Anderson, trustee, as aforesaid, citing and admonishing him to be and appear at the United States circuit court of appeals, for the seventh circuit, to be holden at Chicago, on the 4th day of October, 1904.

Now, the condition of the above obligation is such, that if the said State of New Jersey shall prosecute its appeal to effect and answer all costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

STATE OF NEW JERSEY, [SEAL.]
By MORAN, MAYER & MEYER,
Its Attorneys.
FRANCIS E. MATTHEWS. [SEAL.]

O K.
WHEELER, SILBER & ISAACS,
Att'ys for Trustee.

Approved Sept. 19, 1904.
KOHLSAAT, Judge.

Endorsed: 9059. *In re* Cosmopolitan Power Company, bankrupt. Bond. Filed Sep. 19, 1904 at 10 o'clock a. m. T. C. MacMillan, clerk.

37 And afterwards, to wit, on the 19th day of September, A. D. 1904, the following order was had and entered of record, in said cause, before the Hon. Christian C. Kohlsaat, judge, to wit:

Order of Sept. 19, 1904, Allowing Appeal.

In re COSMOPOLITAN POWER CO., Bankrupt. 9059.

Now comes on to be heard the petition of the State of New Jersey for the allowance of an appeal from the order entered herein on September 12, 1904, in the matter of the claim of said State of New Jersey and upon the petition for such appeal and assignments of error thereon this day filed herein, it appearing to the court that the bond on appeal has been approved and filed, it is hereby

Ordered that said appeal as prayed be and the same is hereby allowed.

Certificate of Clerk.

In the District Court of the United States for the Northern District of Illinois, Northern Division.

I, T. C. MacMillan, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the proceedings had

in this court in the case entitled *In re* Cosmopolitan Power Company, bankrupt, in bankruptcy No. 9059, prepared in accordance with the præcipe of the solicitors for The State of New Jersey, claimant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office at Chicago, in said district, this 5th day of October, A. D. 1904.

[SEAL.] T. C. MACMILLAN, Clerk.

38 Præcipe for Transcript.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

In the United States District Court in and for the Northern District of Illinois, Northern Division Thereof. In Bankruptcy.

In re COSMOPOLITAN POWER CO., Bankrupt. No. 9059.

The clerk will please prepare transcript of the record in the above entitled cause to be transmitted, to the circuit court of appeals for the seventh circuit, and include therein the following:

Plæcipe,
Placita,
Objections by trustee William F. Anderson
Certificate of review by referee Sidney C. Eastman
Supplemental certificate of review by referee Sidney C. Eastman.
Order of Judge Kohlsaat on certificate of review.
Petition for appeal.
Assignment of errors.
Bond on appeal.
Order allowing appeal.
Citation.
Præcipe.

MORAN, MAYER & MEYER,
Attorneys for State of New Jersey.

Endorsed: Filed Sep. 20, 1904, T. C. MacMillan clerk.

39 Citation.

UNITED STATES OF AMERICA, ss:

The President of the United States to William F. Anderson, trustee of the estate of the Cosmopolitan Power Company, bankrupt Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals, for the seventh circuit, to be

holden at Chicago within thirty days from the date hereof, pursuant to a petition for appeal, filed in the clerk's office of the district court of the United States for the northern district of Illinios, wherein The State of New Jersey is appellant and you are appellee, to show cause, if any there be, why the order rendered against the said appellant as in the said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Christian C. Kohlsaat, judge of the district court of the United States for the northern district of Illinois, this 19th day of September, in the year of our Lord one thousand nine hundred and four.

KOHLSAAT,
District Judge.

Service of the within citation accepted this 20th of Sept. 1904.

WHEELER, SILBER & ISAACS,
Att'ys for Wm. F. Anderson, Trustee.

40 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 39, inclusive, contain a true copy of the printed record filed in this court on October 14, 1904, which was prepared for the printer, indexed, supervised and distributed by me in accordance with the rules of this court, and upon which the cause was determined by the United States circuit court of appeals for the seventh circuit, in the case of in the matter of Cosmopolitan Power Company, bankrupt, State of New Jersey, *vs.* William F. Anderson, trustee of the estate of Cosmopolitan Power Co., bankrupt, No. 1122, October term, 1904, as the same remains upon the files and records of the United States circuit court of appeals, for the seventh circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this twenty-second day of May, A. D. 1905.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

41 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago in said seventh circuit, on the fourth

day of October, 1904, of the October term in the year of our Lord one thousand nine hundred and four and of our Independence the one hundred and twenty-ninth.

And afterwards, to-wit: on the seventh day of October, 1904, in the October term last aforesaid, came the appellant by its counsel, Mr. Thomas N. McCarter and Mr. Levy Mayer, and filed in the office of the clerk of this court their appearance which appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1904.

In the Matter of COSMOPOLITAN POWER COMPANY, Bankrupt.

STATE OF NEW JERSEY, Appellant,
vs.
WILLIAM T. ANDERSON, Trustee, etc., Appellee. } No. 1122.

The clerk will enter *my* appearance as counsel for the appellant, State of New Jersey.

THOMAS N. McCARTER,
Att'y Gen'l of New Jersey.
LEVY MAYER.

Endorsed: Filed Oct. 7, 1904. Edward M. Holloway, clerk.

42 And afterwards, to-wit: on the first day of November, 1904, in the October term last aforesaid, the following further proceedings were had and entered of *order*, to-wit:

TUESDAY, November 1, 1904.

Court met pursuant to adjournment.
Present: Hon. James G. Jenkins, circuit judge presiding. Hon. Peter S. Grosscup, circuit judge. Hon. Francis E. Baker, circuit judge.

In the Matter of COSMOPOLITAN POWER COMPANY, Bankrupt.

STATE OF NEW JERSEY
vs.
WILLIAM F. ANDERSON, Trustee, etc., } 1122. Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

Upon application for counsel for appellant, it is ordered that the time for filing brief for appellant in this cause, be, and the same is hereby extended to December 1, 1904.

And afterwards, to-wit: on the third day of January, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, January 3, 1905.

Court met pursuant to adjournment.

43 Present: Hon. James G. Jenkins, circuit judge presiding. Hon. Peter S. Grosscup, circuit judge. Hon. Francis E. Baker, circuit judge.

In the Matter of COSMOPOLITAN POWER CO., Bankrupt.

STATE OF NEW JERSEY
vs.
WILLIAM F. ANDERSON, Trustee, etc.

1122. Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

It is ordered by the court that this cause, be, and the same is hereby set down for hearing February 8, 1905.

And afterwards, to-wit: on the eleventh day of January, 1905, in the October term last aforesaid, there was filed in the office of the clerk of this court, a notice of motion for leave to file brief, which notice is in the words and figures following, to-wit:

STATE OF ILLINOIS,
County of Cook, } *ss:*

In the Circuit Court of Appeals for the Seventh Circuit.

STATE OF NEW JERSEY, Appellant,
vs.
WILLIAM F. ANDERSON, Trustee of Cosmopolitan Power Company, Appellee.

No. 1122.

44 To Moran, Mayer & Meyer, attorneys for appellant:

You will please take notice that on Wednesday, January 11, 1905, before the judges of the circuit court of appeals or any of them, in the court room of said court or in chambers, we shall move for leave to file instanter a brief upon one additional point, at which time and place you may appear if you see fit.

Yours, etc., WHEELER, SILBER & ISAACS,
Attorneys for Appellee.

Dated January 10, 1905.

Received copy of the above notice this 10th day of January A. D., 1905.

____ ____,
Attorneys for Appellant.

STATE OF ILLINOIS, }
County of Cook, } ss:

George Harold Warner, being first duly sworn, on oath deposes and says, that he served the within notice on Moran, Mayer & Mayer, by leaving a true copy thereof with the clerk in the office of said Moran, Mayer & Meyer, at about the hour of 3:10 p. m. January 10, 1905.

GEORGE HAROLD WARNER.

Subscribed and sworn to before me this 10th day of January, A. D. 1905.

[SEAL.] EDWARD P. PRINCE,
Notary Public.

Endorsed: Filed Jan. 11, 1905. Edward M. Holloway, clerk.

45 And on, to-wit: the fifth day of January, 1905, in the October term last aforesaid, the following proceedings were had and entered of record, to-wit:

FRIDAY, January 5, 1905.

Court met pursuant to adjournment.

Present: Hon. James G. Jenkins, circuit judge, presiding; Hon. Francis E. Baker, circuit judge; Hon. J. Otis Humphrey, district judge.

Order.

It is ordered by the court that Hon. J. Otis Humphrey, judge of the district court of the United States for the southern district of Illinois, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Humphrey appeared and took his seat as a member of said court.

And afterwards, to-wit: on the eleventh day of January, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

WEDNESDAY, January 11, 1905.

Court met pursuant to adjournment.

Present: Hon. James G. Jenkins, circuit judge, presiding; Hon. Francis E. Baker, circuit judge; Hon. J. Otis Humphrey, district judge.

46 In the Matter of COSMOPOLITAN POWER COMPANY, Bankrupt.

STATE OF NEW JERSEY *vs.* WILLIAM F. ANDERSON, Trustee. } 1122. Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

On motion of counsel for appellee it is ordered that leave be, and the same is hereby granted the appellee in this cause to file an additional brief.

And afterwards, to-wit: on the eighth day of February, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

WEDNESDAY, February 8, 1905.

Court met pursuant to adjournment.
Present: Hon. James G. Jenkins, circuit judge presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Francis E. Baker, circuit judge.

In the Matter of COSMOPOLITAN POWER COMPANY, Bankrupt.

STATE OF NEW JERSEY *vs.* WILLIAM F. ANDERSON, Trustee, etc. } 1122. Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

47 Now this day come the parties by their counsel and this cause having been partly heard on the printed record and briefs of counsel, and on oral argument by Mr. Levy Mayer, counsel for appellant, the further hearing is continued until ten o'clock to-morrow morning.

And afterwards, to-wit: on the ninth day of February, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

THURSDAY, February 9, 1905.

Court met pursuant to adjournment.
Present: Hon. James G. Jenkins, circuit judge presiding. Hon. Peter S. Grosscup, circuit judge. Hon. Francis E. Baker, circuit judge.

In the Matter of COSMOPOLITAN POWER COMPANY, Bankrupt.

STATE OF NEW JERSEY *vs.* WILLIAM F. ANDERSON, Trustee, etc.	1122. Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

Now again come the parties by their counsel and this cause now comes on to be heard to conclusion on the printed record and briefs of counsel and on oral argument by Mr. Levy Mayer, counsel for appellant, and by Fred D. Silber, counsel for appellee, and the court having heard the same takes this matter under advisement.

48 And afterwards, to-wit: on the eleventh day of April, 1905, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the above entitled cause, which opinion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1904, January Session, 1905.

In re COSMOPOLITAN POWER COMPANY, Bankrupt.

STATE OF NEW JERSEY, Appellant, *vs.* WILLIAM F. ANDERSON, Trustee, Appellee.	No. 1122. Appeal from the District Court of the United States, for the Northern district of Illinois, Northern Division.

Before Jenkins, Grosscup, and Baker, Circuit Judges.

The Cosmopolitan Power Company was organized under the incorporation laws of New Jersey on April 30, 1900, for an unlimited period, to make and deal in engines, machines, materials and merchandise of all kinds, anywhere within the United States and its territories and possessions. The company's seat of operations and all of its tangible property were in Illinois. Its authorized capital stock was $40,000,000. The amount thereof issued and outstanding on January 1, 1902, was $10,000,000. On May 13, 1902, the company duly reduced its capital stock to $2,500,000, all of which was then and thereafter outstanding.

The company was adjudged a bankrupt on a petition filed April 23, 1903.

New Jersey filed a claim, and thereafter asked for an order that the trustee pay it in advance of any dividend to creditors, under sec. 64*a*, as follows:

49	Tax 1902	$5750.00
	Interest to October 15, 1903	891.25
	Costs on injunction proceedings because of non-payments of taxes (begun in August, 1903)	26.15
	Tax 1903	2500.00
	Interest to October 15, 1903	87.50
	Total	$9254.90

Sec. 64*a* reads: "The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district or municipality, in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax, the same shall be heard and determined by the court."

A statute of New Jersey, entitled "An act to provide for the imposition of State taxes upon certain corporations and for the collection thereof," which was in force when the bankrupt was incorporated, provided that "all corporations * * * shall make annual return to the State board of assessors on or before the first Tuesday of May in each year, * * * and shall pay an annual license fee or franchise tax of 1/10 of one per centum of all amounts of capital stock issued and outstanding on January 1 of such year up to and including the sum of three million dollars," on any amount in excess of three million, not exceeding five million dollars, 1/20 of one per centum, and on any further excess $50 per million or any part thereof; that the State board shall fix the amount of the "annual license fee or franchise tax," in case the corporation fails to make its return; that on or before the first Monday in June the State board shall report to the comptroller the basis and amount of such tax, which "shall thereupon become due and payable and it shall be the duty of the State treasurer to receive the same;" that "such tax, when determined, shall be a debt due from such company to the State;" that if the tax remains unpaid on July first, it shall thenceforth until paid bear interest at the rate of one per centum a month, and the State thereupon may maintain an action at law for its recovery; that "such tax shall also be a preferred debt in case of insolvency;" that if any tax remains in arrears for three months, the State may apply for an injunction to restrain the company
50 from exercising its franchises; and that if any company is delinquent for two years, its charter shall be void unless further time be given for the payment of such taxes.

New Jersey's constitution requires that "property shall be assessed for taxes under general laws by uniform rules according to its true value."

The referee and the court denied priority, but allowed a reduced amount, $4943.08, as a general claim.

Appellant contends that the court erred in refusing to direct the trustee to pay the claim as taxes, in reducing the amount claimed for 1902, and in rejecting the amount claimed for 1903.

Appellee denies the merits of all of these contentions; but insists that on this appeal the question of priority can not be considered.

BAKER, *Circuit Judge*, delivered the opinion of the court:

I. As more than $500 of appellant's claim was disallowed, an appeal under sec. 25*a* is undoubtedly proper. *In re* Friend, Moss & Morris, — Fed. —. The case being here on appeal respecting the amount of the claim, we think appellant may also present any question concerning the security or rank of the debt, as an incident thereof (Cunningham *v.* German Ins. Co., 103 Fed. 932), though the question of lien or priority, if alone involved, could be reviewed only under sec. 24*b* (*In re* Rouse, Hazard & Co., 91 Fed. 100). If the case of *In re* Worcester County, 102 Fed. 808, is to be construed as requiring us to split the case and dismiss the portion that affects priority, we are not disposed, as now advised, to follow it.

II. Appellant argues that her highest court has decided that the charge is a tax and that the decision is controlling here. The argument is founded on the case of Hancock *v.* Singer Mfg. Co., 62 N. J. L. 289 (decided Nov. 14, 1898). Appellee contends with equal earnestness that the later case of *In re* United States Car Co., 60 N. J. Eq. 514 (decided July 7, 1899), holds that the charge is not a tax. In *In re* Mutual Mercantile Agency, 8 Am. Bankr. R. 435, the referee relied on the Singer Co. case, without noting the car Co. case, and directed the trustee to pay New Jersey a claim like this as taxes under sec. 64*a*. In *In re* Danville Rolling Mill Co., 121 Fed.
51 432, the district court relied on the car Co. case, without noting the Singer Co. case, and refused to order the payment of New Jersey's claim as taxes.

Long before the passage of the act for an "annual license fee or franchise tax," the Singer Co. had been granted by New Jersey a charter which provided that upon certain conditions "the real and personal property of the said corporation not actually and in fact within the State of New Jersey, and the stock of the said corporation held or owned by any of its stockholders, shall not be liable to any tax or impost whatsoever." The State undertook to collect from the Singer Co. an "annual license fee or franchise tax." In Singer Mfg. Co. *v.* Heppenheimer, 58 N. J. L. 634, the attempt was defeated. In the second Singer Co. case, relied on by appellant, the first decision was adhered to. The rationale, it seems to us, is this: The State could collect nothing on account of franchises except (either or both) compensation for granting them or taxes upon their value as property after they had been granted. The consideration for the Singer Co. charter was determined upon when the charter was granted; the contract in that respect could not thereafter be impaired by the State; therefore, if the statute is to be construed as an attempt of the State to exact further compensation for the pre-existing franchises

of the Singer Co., it can not be given effect; the franchises to be and to do, when granted, became property which was subject to be taxed as other property unless the State had lawfully bargained away or limited its right; the State had agreed not to tax the company's property which was outside of the State; it was contemplated in the charter that the company should, and it did in fact, own tangible property and exercise its franchises beyond the State's lines; therefore, if the statute is to be construed as an attempt of the State to tax so much of the franchise values as lie outside of the State, it would be an impairment of the contract. The expressions in the opinion that the "license fee" is a "tax" must be read, we think, in the light of the fact that the court was dealing with a charter with relation to which the statute was subsequent legislation. Carroll *v.* Lessee of Carroll, 16 How. 275, 286.

In the Car Co. case, *supra*, the corporation, to judge from the decision, was organized under the general laws of New Jersey after the statute relating to the so-called "annual license fee or franchise tax" was in force. The corporation was decreed to be insolvent; receivers were appointed; and thereafter the State board of
52 assessors returned to the comptroller an assessment of the "annual license fee or franchise tax." The trial court, interpreting the statutory charge as a tax upon the corporate franchises, and finding that the franchises were valueless and had not been exercised by the receivers, held that the tax was not payable out of the funds in the receivers' hands until after all indebtedness existing at the time of their appointment was discharged. The reviewing tribunal, not denying the justness of the trial court's application of the statute to the facts, if its interpretation of the statute was correct, said: "We cannot concur in this view. Although the statute designates an imposition of this kind as a license fee or franchise tax, it plainly is not a tax upon corporate franchises. In fact it is not, strictly speaking, a tax at all, nor has it the elements of one. It is in reality an arbitrary imposition laid upon the corporation without regard to the value of its property or of its franchises, and without regard to whether it exercises the latter or not, solely as a condition of its continued existence. The State, in creating a corporation, has the right to impose upon its creature such conditions as the legislature, within constitutional limits, may deem proper, and the acceptance by the corporation of the franchises, powers and privileges conferred upon it binds it to the performance of those conditions so long as it continues to remain in possession of those franchises, powers and privileges, and the conditions themselves remain unrevoked by the legislature."

We are of the opinion that the foregoing excerpt is not a mere dictum, but that, on the contrary, it is the court's determination of the essential nature of the statutory imposition, properly given in deciding the question presented. If so, the case may be accepted as controlling, because it is not for the United States bankruptcy courts

to insist upon a State's receiving as a tax under sec. 64*a* something which the State declares is not. *In re* Ott, 95 Fed. 274.

But if we are mistaken, and if the Singer Co. case is to be accepted as an authoritative decision that the charge in question is a tax, we do not believe that the United States bankruptcy courts are bound to follow it blindly. The question with them is the interpretation and application of sec. 64*a*. If the legislature of a State gives the name tax to an exaction which is not a tax, and if the courts of a State join in the misnomer, surely the bankruptcy courts are not required to disregard the substance of the thing, to the detriment of other claimants. The State courts may authoritatively ex-
53 pound the substance and the Federal courts will adopt such exposition; but whether the substance constitutes a tax or not is independent of the name. And moreover the latter part of sec. 64*a* seems to direct the bankruptcy courts to determine independently the "legality of any such tax."

If it be conceded that the word "taxes" in sec. 64*a* includes every contribution to the support of government which any State may exact from the persons, occupations and possessions of its citizens and corporate subjects, is the charge in question a tax? It is not a capitation tax, for it is not laid upon corporations by the head. It is not an occupation tax, for it has no regard to the business in which the corporations engage, It is not a property tax, for it pays no heed to the extent or value of property, as the State constitution requires. Franchises are property. The franchise to be and the franchise to do both go wherever the corporation goes; both are property. Adams Express Co. *v.* Ohio, 166 U. S. 185, 224. A State may grant franchises and then tax them as property, just as it may grant or lease land and then tax the granted estate as property. But the tax upon the estate is not to be confused with the consideration for the grant. If one pays a lump sum or annual sums as the consideration for the grant, he does so by virtue of a contract; but he is not thereby relieved from the sovereign demand, *in invitum*. And that is the distinguishing feature of a tax,—the sovereign does not bargain with his subject, he commands. The statute here under consideration does not purport to be an amendment of the incorporation laws of the State. But when the incorporators of the bankrupt came to seek a charter, this statute expressed one of the terms on which it could be obtained and held. The sovereign State could not command the incorporators to accept a charter; it could only say, if you do accept it, you must pay so and so for the grant.

III. When the bankrupt failed to make its return for 1902, the State board, assuming that the authorized capital stock of $40,000,000 was issued and outstanding on January 1, 1902, fixed the amount of the charge at $5750. The referee and the court reduced this to $4250, the amount properly chargeable to a capital stock of $10,000,000 issued and outstanding. Appellant insists that the action of the State board was quasi judicial and is not subject to collateral attack. This contention would require consideration, if the charge were a

tax. Holding it to be a liability under a contract, we find no error in the court's looking to the contract for the measure of the
54 liability. Whether, as appellee urges, the court erred in allowing any sum whatever for 1902, can not be reviewed, as no cross-appeal was taken.

IV. As to the $2500 item the question is whether it was a debt owing on April 23, 1903, when the petition was filed. The promise of the bankrupt, as we construe it, was to pay on or before the first of July in each year a sum based on the amount of stock issued and outstanding on the first day of January of that year. On January 1, 1902, the amount of stock issued and outstanding was $10,000,000. That determined the amount, even though the stock was reduced to $2,500,000 on May 13, 1902, long before the obligation matured and could be sued upon. Prior to January 1, 1903, the promise to pay on or before July 1, 1903, did not evidence an accrued debt, because it could not be known whether any stock would be outstanding when the first of January should come around. But on that date, we think the promise accrued to pay 1/10 of one per centum on $2,500,000 of stock then outstanding. That the claim bore no interest and could not be sued upon before the first of July, affects only the maturity of the obligation.

The district court is directed to add to its allowance of a general claim the sum of $2500 less a rebate of interest at one per cent. a month from July 1, 1903, back to April 23, 1903. In other respects the decree is affirmed. Costs here to be divided equally.

And afterwards, on the same day, to-wit: on the eleventh day of April, 1905, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, April 11, 1905.

Court met pursuant to adjournment.

Before Hon. James G. Jenkins, Circuit Judge; Hon. Peter S. Grosscup, Circuit Judge; Hon. Francis E. Baker, Circuit Judge.

55 In the Matter of COSMOPOLITAN POWER COMPANY, Bankrupt.

STATE OF NEW JERSEY *vs.* WILLIAM F. ANDERSON, Trustee of the Estate of Cosmopolitan Power Company, Bankrupt.	1122. Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

This cause came on to be heard on the transcript of the record from the district court of the United States for the northern district of Illinois, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged and decreed by this court, that the order or decree of the said district

court entered on September 12, 1904, in this cause, be, and the same is hereby reversed; and that this cause, be, and the same is hereby remanded to the said district court with directions to add to its allowance of a general claim the sum of $2500, less a rebate of interest of one per cent. a month from July 11, 1900, back to April 23, 1903: In other respects the decree is affirmed and it is further ordered that the costs here be divided equally.

56 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 15, inclusive, contain a true copy of the *of the* papers filed (except briefs of counsel) and proceedings had thereon in the United States circuit court of appeals for the seventh circuit in the case of In the matter of Cosmopolitan Power Company, bankrupt, State of New Jersey, vs. William F. Anderson, trustee, of the estate of the Cosmopolitan Power Company, bankrupt, No. 1122, October term, 1904, as the same remains upon the files and records of the United States circuit court of appeals, for the seventh circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this ninth day of April, A. D. 1905.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals
for the Seventh Circuit.

56½ Appeal allowed and bond fixed in the sum of five hundred dollars. In my opinion the determination of the questions involved herein is essential to a uniform construction of the bankruptcy act throughout the United States.

May 11, 1905.

WILLIAM R. DAY,
Associate Justice, Supreme Court of the United States.

57 [Endorsed:] United States circuit court of appeals for the seventh circuit. Filed May 17, 1905. Edward M. Holloway, clerk.

58 And afterwards, to-wit: on the seventeenth day of May, 1905, in the October term last aforesaid, came the appellant, by its counsel, Moran, Mayer and Meyer, and filed in the office of the clerk of this court a notice of motion, which notice is in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division Thereof, } ss:

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1904.

In the Matter of COSMOPOLITAN POWER COMPANY, Bankrupt. No. 1122.

STATE OF NEW JERSEY, Appellant,
vs.
WILLIAM F. ANDERSON, Trustee, etc., Appellee.

To Messrs. Wheeler, Silber & Isaacs, attorneys for appellee:

Please take notice that on Wednesday, the 17th day of May, A. D. 1905, at the opening of the court at 2 o'clock p. m. before the United States circuit court of appeals for the seventh circuit, in the court-room usually occupied by them, we shall ask leave to file the certificate of William R. Day, associate justice of the Supreme Court of the United States, granting an appeal in the above entitled cause
59 to the Supreme Court of the United States, from the order of the United States circuit court of appeals for the seventh circuit, and at the same time we shall file an appeal bond therein, at which time and place you may appear if you see fit.

MORAN, MAYER & MEYER,
Attorneys for Appellant.

LEVY MAYER, Of Counsel.

Received copy of the above and foregoing notice this 16th day of May, 1905.

WHEELER, SILBER & ISAACS.

Endorsed: Filed May 17, 1905. Edward M. Holloway, clerk.

And afterwards, on the same day, to-wit: on the seventeenth day of May, 1905, in the October term last aforesaid the following further proceedings were had and entered of record to-wit:

WEDNESDAY, May 17, 1905.

Court met pursuant to adjournment.

Present: Hon. Peter S. Grosscup, circuit judge presiding. Hon. Francis E. Baker, circuit judge. Hon. William H. Seaman, circuit judge.

In the Matter of COSMOPOLITAN POWER COMPANY, Bankrupt.

STATE OF NEW JERSEY vs. WILLIAM F. ANDERSON, Trustee, etc. } 1122. Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

60 Now this day comes the appellant by its counsel Mr. Levy Mayer, and presents the order of the Supreme Court of the United States, entered on the eleventh day of May, 1905, allowing an appeal in this court, bond for costs and citation; thereupon it is ordered by the court that the same be filed and that mandate in this cause be stayed until further order of this court.

And afterwards, on the same day, to-wit: on the seventeenth day of May, 1905, in the October term last aforesaid, there was filed in the office of the clerk of this court the bond on appeal, which bond is in the words and figures following, to-wit:

Know all men by these presents, that we, State of New Jersey, as principal, and American Bonding Company of Baltimore, as sureties are held and firmly bound unto William F. Anderson, trustee of Cosmopolitan Power Company in the full and just sum of five hundred dollars to be paid to the said William F. Anderson trustee of Cosmopolitan Power Company, certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eleventh day of May, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a term of the United States circuit court of appeals for the seventh circuit in a suit depending in said court between State of New Jersey, appellant and William F. Anderson, trustee of Cosmopolitan Power Company, appellee, a decree
61 was rendered against the said State of New Jersey, and said State of New Jersey having obtained an order allowing an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said William F. Anderson, trustee of Cosmopolitan Power Company, citing and admonishing him to be and appear at a Supreme Court of the United States at Washington, within 30 days from the date thereof.

Now the condition of the above obligation is such, that if the said State of New Jersey shall prosecute her appeal to effect, and answer all damages and costs, if she fail to make her plea good,

then the above obligation to be void; else to remain in full force and virtue.

STATE OF NEW JERSEY, [SEAL.]
By THOMAS A. MORAN, Attorney. [SEAL.]
AMERICAN BONDING COMPANY OF BALTIMORE,
By THOS. J. DE LASHMUTT, [SEAL.]
Attorney in Fact.

Sealed and delivered in presence of—
J. M. RYAN.
F. D. MITCHELL.

Approved by—
WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

Endorsed: Filed May 17, 1905. Edward M. Holloway, clerk.

And afterwards, on the same day, to-wit: on the seventeenth day of May, 1905, in the October term last aforesaid, there was filed in the office of the clerk of this court an assignment of errors, which assignment of errors, is in the words and figures following, to-wit:

62 In the Supreme Court of the United States, October Term, A. D. 1904.

In the Matter of COSMOPOLITAN POWER COMPANY, Bankrupt.

STATE OF NEW JERSEY, Appellant,
vs.
WILLIAM F. ANDERSON, Trustee of the Estate of Cosmopolitan Power Company, Bankrupt.

Assignment of Errors.

And now comes the State of New Jersey and files herein the following assignments of error upon which it will rely upon its appeal from the judgment of the United States circuit court of appeals for the seventh circuit, in the above entitled cause, being a certain judgment entered therein on April 11, 1905, on the claim of the State of New Jersey which judgment denied to said claimant priority under section 64*a* of the bankruptcy act.

The appellant assigns as error the following:

1. For that the said United States circuit court of appeals for the seventh circuit erred in holding that the franchise tax, upon which the said claim was based, was not such a claim as was entitled to priority under section 64*a* of the bankruptcy act of 1898.

2. For that said United States circuit court of appeals for the seventh circuit, erred in holding that the said license fee or franchise tax was not a tax.

3. For that the said United States circuit court of appeals for the seventh circuit erred in allowing the claim of the State of
63 New Jersey as a general claim and not as a preferred claim.

4. For that the said United — circuit court of appeals for the seventh circuit erred in not allowing the claim of the State of New Jersey as a preferred claim for the sum of $9,254.90.

5. For that the United States circuit court of appeals for the seventh circuit erred in holding that the franchise tax assessed against the said Cosmopolitan Power Company, bankrupt, for the year 1902, amounting to $5,750.00 and the interest thereon was not such a claim as was entitled to priority under section 64*a* of the bankruptcy act of 1898.

6. For that the United States circuit court of appeals for the seventh circuit, erred in holding that the franchise tax assessed against the said Cosmopolitan Power Company, bankrupt, for the year 1903, amounting to $2,500.00 and the interest thereon, was not such a claim as was entitled to priority under section 64*a* of the bankruptcy act of 1898.

7. For that the said United States circuit court of appeals for the seventh circuit erred in allowing the said claim of the State of New Jersey for the franchise tax of 1902 for the sum of $4,250.00 and not for the sum of $5,750, as filed.

Wherefore in order that the foregoing assignment of errors may be and appear of record the said State of New Jersey presents the same to the court and prays that such disposition be made thereof as in accordance with law and the statutes of the United States in such cases made and provided, and the said State of New Jersey prays that said judgment of said United States circuit court
64 of appeals, for the seventh circuit, may be reversed and the said cause remanded to the said district court with directions to enter an order allowing the entire claim of said State of New Jersey as a preferred claim under section 64*a* of the bankruptcy act and amendments thereto.

LEVY MAYER,
ROBERT H. McCARTER,
T. A. MORAN,
Attorneys for said State of New Jersey.

Endorsed: Filed May 17, 1905. Edward M. Holloway, clerk.

And afterwards, on the same day, to-wit: on the seventeent- day of May, 1905, there was filed in the office of the clerk of this court a citation, which citation is in the words and figures following, to-wit:

65 UNITED STATES OF AMERICA, ss:

To William F. Anderson, trustee of Cosmopolitan Power Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the United States circuit court of appeals for the seventh circuit wherein The State of New Jersey is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William R. Day, associate justice of the Supreme Court of the United States, this 11th day of May, in the year of our Lord one thousand nine hundred and five.

WILLIAM R. DAY,
Associate Justice of the Supreme Court
of the United States.

66 We hereby accept service of the within citation.

WHEELER, SILBER & ISAACS,
Attorneys for William F. Anderson, Trustee.

Chicago May 17/05.

Filed May 17 1905.
EDWARD M. HOLLOWAY, Clerk.

67 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing typewritten pages, numbered from 17 to 24, inclusive, contain a true copy of the papers filed and proceedings had thereon in the United States circuit court of appeals for the seventh circuit, subsequent to the foregoing certificate of April 9, 1905, in the case of In the matter of Cosmopolitan Power Company, bankrupt, State of New Jersey, *vs.* William F. Anderson, trustee of the estate of Cosmopolitan Power Company, bankrupt, No. 1122, October term, 1904, as the same remains upon the files and records of the United States circuit court of appeals, for the seventh circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh

circuit, at the city of Chicago, this twenty-second day of May A. D. 1905.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

Endorsed on cover: File No. 19,804. U. S. circuit court of appeals, 7th circuit. Term No. 302. The State of New Jersey, appellant, *vs.* William F. Anderson, trustee of Cosmopolitan Power Company. Filed June 15th, 1905. File No. 19,804.